

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
IN CLERK'S OFFICE

UNITED STATES OF AMERICA
Plaintiff,

v.

ONE 1993 BMW 325i
VEHICLE IDENTIFICATION NUMBER)
WBAF431XPEK09579;)
REGISTRATION NUMBER 40RH40)
Defendant.)

FILED
2005 FEB 15 P 1:47
U.S. DISTRICT COURT
DISTRICT OF MASS.

05 10305 MLW

Civil Action No. MAGISTRATE JUDGE *New Judge*

COMPLAINT FOR FORFEITURE IN REM

The United States of America, by its attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, in a civil action of forfeiture, alleges that:

1. This action is brought by the United States pursuant to 21 U.S.C. §881(a)(4). This Court has jurisdiction in this matter pursuant to 28 U.S.C. §§1345, 1355, and 1356. Venue is appropriate pursuant to 28 U.S.C. §1395.

2. The in rem defendant is now and, during the pendency of this action, will be within the jurisdiction of this Court.

3. The in rem defendant is more particularly one red 1993 BMW 325i, VIN#WBAF431XPEK09579, bearing Massachusetts license plate 40RH40, registered to Michael Mills (hereinafter referred to as "the defendant vehicle").

4. As outlined in the Affidavit of Special Agent Paul L.D. Russell, Jr., (the "Russell Affidavit"), which is attached hereto and incorporated by reference, the United States has probable cause to believe that the defendant vehicle constitutes property used, or

intended to be used, in any manner or part, to commit, or to facilitate the commission of a criminal drug violations pursuant to 21 U.S.C. §§841 and/or 846.

5. By virtue of the facts alleged herein, the defendant vehicle is subject to forfeiture to the United States of America pursuant to 21 U.S.C. §881(a)(6).

WHEREFORE, the United States of America prays:

1. that a Warrant and Monition, in the form submitted, issue to the United States Marshal for the District of Massachusetts, commanding her to give notice to all interested parties to appear and show cause why the forfeiture should not be decreed;

2. that judgment of forfeiture be decreed against the defendant property;


3. that thereafter the defendant properties be disposed of according to law; and

4. for costs and all other relief to which the United States may be entitled.

Respectfully submitted,

MICHAEL J. SULLIVAN,
United States Attorney

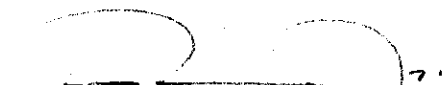
By:


Jennifer H. Zacks
Assistant U.S. Attorney
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210
(617) 748-3100

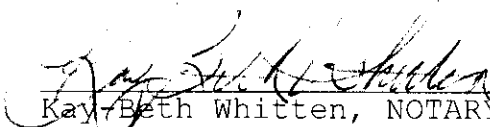
Date: February __, 2005

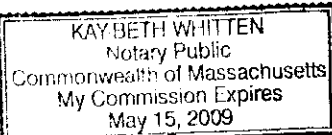
VERIFICATION

I, Paul L.D. Russell, Jr., Special Agent with the Drug Enforcement Administration, state that I have read the foregoing Complaint for Forfeiture in Rem, and the attached Affidavit, and the contents thereof are true to the best of my knowledge, information, and belief.


Paul L.D. Russell, Jr.,
Special Agent

Subscribed and sworn to before me this 11th day of February, 2005.


Kay Beth Whitten, NOTARY PUBLIC
My Commission expires: 5/15/2009



N:\Jamieson\J. Zacks\1993 BMW\Complaint for Forfeiture.wpd

EXHIBIT 1

AFFIDAVIT OF PAUL L.D. RUSSELL, JR.

05-10305 MLW

I, Paul L.D. Russell, Jr., hereby state the following under oath:

1. I am a Special Agent with the United States Drug Enforcement Administration ("DEA"), and am currently assigned to DEA Task Force One, in the Boston office. I have been employed as a Special Agent for approximately 22 years. During my employment with DEA, I have participated in over 300 narcotic investigations, involving a variety of illegal drugs, including crack cocaine, cocaine, methamphetamine and heroin. These investigations have resulted in the seizure of illegal drugs and/or proceeds and numerous arrests and convictions of drug users, sellers, and traffickers of controlled substances. Based on my training and experience, I am familiar with the methods used to package and distribute illegal drugs, the codes and shorthand employed in the illegal narcotics business, and the techniques used to conceal illegal drugs, their distribution and their proceeds from law enforcement.

2. I submit this application in support of a Complaint for Forfeiture in rem, pursuant to 21 U.S.C. §881(a)(4), against the following property:

One red 1993 BMW 325i, VIN#WBAF431XPEK09579,
bearing Massachusetts license plate 40RH40,
registered to Michael Mills (the BMW),

which was used or intended to be used to facilitate the

transportation, sale, receipt, possession, or concealment of illegal narcotics in violation of Title 21, United States Code, Section 841 and/or 846.

3. This affidavit is based on an investigation conducted by a multi-unit law enforcement task force consisting of the Massachusetts State Police (Middlesex County), DEA, Somerville, Medford, Cambridge, Malden, Everett, and Stoneham Police Departments. It includes information based on my own personal knowledge, as well as information obtained from other law enforcement officers and my review of records and reports. This affidavit does not contain all information obtained by law enforcement officers in the course of this investigation, but is limited to that information necessary to support the complaint for forfeiture.

4. A cooperating individual (CI1) informed law enforcement that "Mike," CI1's source of supply for cocaine, would deliver an eighth of an ounce of cocaine to CI1 on August 20, 2004 at approximately 7:00 P.M. CI1 specified that the drug delivery would take place outside the Town Line Bowling Alley, located on Route 99, near the Malden/Melrose City line. CI1 also stated that "Mike" would be driving a red BMW.

5. On August 20, 2004, at approximately 6:45 P.M., along with a number of other task force agents, I established surveillance in the vicinity of Town Line Bowling Alley. At

approximately 7:45 P.M., I observed a red BMW with Massachusetts license plate 40RH40,, containing a white male, later identified as Michael Mills (Mills), enter the Town Line Bowling Alley parking lot. Shortly thereafter, the BMW was observed exiting the lot and proceeding south on Route 99.

6. The officers attempted to conduct a motor vehicle stop of the BMW, pulling up beside the BMW with a number of unmarked police cars equipped with blue lights and sirens and verbally identifying themselves as police. However, Mills, instead of stopping, attempted to elude the police, driving at an extremely high rate of speed south on Route 99. Mills then turned onto Salem Street, a residential street, where he steered the car onto the sidewalk and continued to drive at a speed of approximately 60 to 70 miles per hour.

7. During the chase, Mills had his car windows rolled down and was observed to be holding plastic bags in his teeth and, while driving with one hand, discarding the contents of the plastic bags and the plastic bags themselves out the righthand side window. Mills disposed of approximately two or three plastic bags in this manner. Massachusetts State Trooper David Martinelle later recovered one of the plastic bags on the street where it had been thrown. The plastic bag was determined to contain cocaine residue.

8. Mills came to a stop only after his car had been boxed in by police vehicles. At this point, Mills was advised of his


rights and taken to the Revere State Police Barracks for processing. When Mills was stopped, the officers could see white powder on Mills' clothing and in the BMW. The powder on the floor and the driver's seat of the BMW was later determined to be cocaine residue.

9. Mills was charged in state court with possession to distribute cocaine, conspiracy to distribute cocaine, and various motor vehicle violations. Mills is currently out on bail and his next scheduled court appearance is March 28, 2005.

Conclusion

Based upon the facts stated above, there is probable cause to believe that the BMW was used, or was intended to be used, to transport, sell, receive, possess, or conceal cocaine. Accordingly, there is probable cause to believe that the BMW is forfeitable to the United States of America pursuant to 21 U.S.C. §881(a)(4).

Signed under the pains and penalties of perjury this 11th day of February, 2005.



Paul L.D. Russell, Jr.,
Task Force Agent
United States Drug Enforcement
Administration

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States of America

IN CLERKS OFFICE
2005 FEB 15 P 1:43

DEFENDANTS

One 1993 BMW 325i

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

(EXCEPT IN U.S. PLAINTIFF CASES)

U.S. DISTRICT COURT
DISTRICT OF MASS

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

617-748-3100

ATTORNEYS (IF KNOWN)

Jennifer H. Zacks, Assistant U.S. Attorney

United States Attorney's Office

1 Courthouse Way, Suite 9200, Boston, MA 02210

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input checked="" type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 881 HIA (1395ff) <input type="checkbox"/> 882 Black Lung (923) <input type="checkbox"/> 883 DIWC/DIWW (405(g)) <input type="checkbox"/> 884 SSID Title XVI <input type="checkbox"/> 885 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret Inc Security Act		

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

The U.S. seeks to forfeit One 1993 BMW 325i, pursuant to 21 United States Code; Section 881(a) (n), for alleged drug violations.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

2/15/2005

J. H. Zacks

Jennifer H. Zacks, Assistant U.S. Attorney

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) U.S. v. One 1993 BMW 325i
2. Category in which the case belongs based upon the numbered nature of suit completed on the civil cover sheet. (See local rule 40.1(a)(1)).
- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- XX II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(a)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the u.s.a. or an officer, agent or employee of the u.s. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 usc §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the commonwealth of massachusetts ("governmental agencies"), residing in massachusetts reside in the same division? - (See local rule 40.1(d)).
YES ☐ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Jennifer H. Zacks, AUSAADDRESS United States Attorney's Office, 1 Courthouse Way, Suite 9200, Boston, MA 02210TELEPHONE NO. (617) 748-3100